

Generally, retail businesses are required to collect and remit sales and use taxes on qualifying merchandise or services. While most States require consumers to remit use taxes for purchases from out-of-State vendors, compliance is extraordinarily low as States cannot legally mandate the collection and remittance of taxes by a business unless the business has a physical presence in the State.

This restriction, which was articulated in the 1992 Supreme Court case, *Quill Corp. v. North Dakota*, went so far as to invite Congress to address the issue. It is time we do that.

In an era of unprecedented e-commerce, Congress's failure so far to address this problem unfairly deprives State treasuries of much-needed tax revenue because Internet-based retailers are not required to charge sales tax to their out-of-State customers. As you might imagine, a large number of State governments have asked for this legislation to fix that problem, including the current Republican Governor of Michigan. In fact, Michigan governors of both political parties have asked Congress to pass this important piece of legislation, and I agree with them.

The Governor of Michigan says that passing this law will help the State of Michigan collect more than \$800 million over the next 2 years. Those are revenues that the State desperately needs.

I also think it's important to keep in mind some of the things this bill doesn't do. This bill does not authorize the States to create State-level financial transaction taxes, as some have erroneously argued. In fact, the Marketplace Fairness Act does not create, endorse, or recommend new Federal, State or local taxes of any kind.

This bill gives States the option of pursuing collection authority by simplifying their tax structure, but States can also choose to do nothing differently than they do today. The Marketplace Fairness Act is about more equitably collecting taxes that are already owed.

Over the past decade, many States have worked together to develop a framework to harmonize sales and use tax collection and remittance, known as the Streamlined Sales and Use Tax Agreement. Michigan is 1 of the 24 States that currently participate in that agreement. But, in order for the agreement to be legally enforceable, Congress would need to enact legislation granting States the authority to require out-of-State merchants to remit sales and use taxes. This bill would do that.

I support this effort to simplify and improve sales tax collection, and I am a cosponsor of this bill. This bill will level the playing field between on-line retailers and those with "brick and mortar" stores, ensuring that we do not give an unfair tax advantage to one type of retailer over another. This is about ensuring that our States have the ability to collect the taxes they

need to fund schools, and law enforcement, and other key priorities.

I will vote for this bill, and I urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Illinois

UNANIMOUS CONSENT AGREEMENT—S. 601

Mr. DURBIN. Mr. President, I ask unanimous consent that the cloture motion with respect to the motion to proceed to Calendar No. 44, S. 601, be withdrawn; further, that at 2:15 p.m. on Tuesday, May 7, the motion to proceed to S. 601 be agreed to and the Senate begin consideration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

MARKETPLACE FAIRNESS ACT

Mr. DURBIN. Mr. President, in the closing 10 minutes, the four proponents who will speak will be first Senator HEITKAMP of North Dakota, followed by Senator ALEXANDER of Tennessee, myself, and then Senator ENZI of Wyoming, who has for 11 years been fighting for this vote. I want him to have the last word.

The PRESIDING OFFICER. The Senator from North Dakota.

Ms. HEITKAMP. Mr. President, this is a day that has been 20 years in the making. You have heard argument after argument here about how this bill has been rushed, how it is not ready, how we have not yet had enough debate or deliberation. I tell you on behalf of the small business owners in my State who have told me it is about darn time we do something, I stand today and congratulate this body for taking on this issue and taking a system that has been grossly unjust and incredibly unfair to Main Street businesses in our country and in our State and said, yes, the Senate will not stand back and wait any longer before we give you marketplace fairness.

This bill could not be and could not have a better name than Marketplace Fairness. I got involved in this issue as a very young person—I like to say that because it was 20 years ago—litigating a case before the U.S. Supreme Court. I was moved to take that case to the Court by a woman who approached me and said: Look, I am trying to survive. I am trying to participate as a good businessperson in North Dakota, trying to support my community, trying to do everything right, collect my sales tax, but I am getting killed in the marketplace, because people are sending catalogs; people come into my store; they will look at my products. Then they order this stuff through a mail order business. Please help me.

Those pleas have for the last 20 years gone unheard by this body and by the House of Representatives. But today we have a chance. We have a chance to say to all of those businesspeople throughout our country who have been unfairly treated by a tax system that

does not recognize today's modern-day method of marketing, this modern-day way we do business and commerce in our country has not been recognized. They continue to struggle, continue to try. I congratulate the Senate. I congratulate all of the other Senators who have pursued this with such vigor and with such hope. I say today is the day that we say yes to America's small businesses.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask I be notified when I have consumed 2½ minutes.

The PRESIDING OFFICER. The Senator will be notified.

Mr. ALEXANDER. Mr. President, I congratulate the Senator from North Dakota on 20 years of work on this issue, Senator ENZI for 11 years of tireless work here, and Senator DURBIN for his effective advocacy. I will make four quick points.

The Senator from Texas said reinvigorating the economy should be the No. 1 priority for Federal and State leaders. That is precisely the first sentence of the column of economist Art Laffer in the *Wall Street Journal* where he says:

States can cut their income tax rates if web vendors collect the sales taxes that are legally due.

In other words, if you want economic growth, vote for the Marketplace Fairness Act.

No. 2, the idea that this is too complex to do—more than half of the sales now made on the Internet are by retailers that collect the tax when it is sold. It is a tax that is already owed, so how can it be too complex for anybody else to do? It is already being done. So that is specious.

No. 3, it has been said this should have gone to committee. It did. It just never came out of committee because the chairman, and I say that with great respect, did not want it to. It should have had amendments. Yes, it should have had amendments. Why didn't it have amendments? Because the opponents to the bill resorted to objecting to every single amendment.

Finally, I say this to my Republican colleagues: This is a conservative bill. I just mentioned Mr. Laffer. I read this earlier, but I want to read it again. The comments of the chairman of the American Conservative Union, Al Cardenas:

Dear Senators, you continue work next week on the Marketplace Fairness Act. I would like to call to your attention what conservatives are saying about the issue. They recognize, as I do, it is not the role of government to pick winners and losers in the marketplace by requiring brick and mortar stores to charge a sales tax while exempting Internet sales.

He then lists the comments of Charles Krauthammer favoring the idea, Representative PAUL RYAN favoring the idea, and, of course, as we know, William F. Buckley did before he

died. Many Governors do. This is an idea for conservatives and for our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, thanks to my colleagues who are on the floor, especially Senator ALEXANDER. Senator ENZI and I owe the Senator a great debt of gratitude for his work on this bill, in helping us craft the bill and bring the support together.

I ask unanimous consent that the following four editorials be printed in the RECORD, from the New York Times, the Idaho State Journal, the Green Bay Press Gazette, and the Northwest Herald of Illinois.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 1, 2013]

FAIRNESS ON SALES TAXES

(Editorial Board)

Twenty-one years is a long time to wait. But that is how long local retailers have waited for Congress to undo a 1992 Supreme Court decision that exempted many online retailers, like Amazon.com, from collecting most state sales taxes. The exemption has given online sellers a 5 percent to 10 percent price advantage over Main Street stores.

The wait, however, may soon be over. Next week, the Senate is expected to pass the Marketplace Fairness Act of 2013, a bipartisan bill that would authorize states to require out-of-state sellers with more than \$1 million in sales to collect sales taxes. The states, in turn, must simplify their sales-tax codes and give retailers free software to calculate the taxes—steps already taken by most states. An identical bill in the House also has bipartisan support.

Lawmakers have raised the issue for years, to no avail, and, in the meantime, many brick-and-mortar stores have gone out of business. The willingness to act now is driven in part by the fact that Amazon, which fought hard to preserve the exemption, recently gave up the fight. That's not because the company suddenly developed a belief in sales taxes. Its business model—especially its emphasis on same-day delivery—is changing in ways that would soon cause it to lose the exemption anyway.

Main Street needs a level playing field to compete with the exploding online industry. So do large retailers, like Best Buy, that have cut jobs as shoppers have increasingly tested electronics at local stores and then gone home to buy them online without paying sales tax. Equally important, states need the revenue to help recover from the recession. Noncollection of sales tax on online purchases costs states an estimated \$11 billion a year. Another \$11 billion goes uncollected on mail-order catalog sales, which would also be covered under pending bills.

In the past, most bills that deal with revenue, no matter how justified, have fallen victim to the knee-jerk refusal among many Republicans to even talk about taxes, urged on by anti-tax groups like Grover Norquist's Americans for Tax Reform. But, as reported in the Times on Monday, lawmakers from both parties have come to see that the argument for sales-tax collection is airtight.

Sales taxes for any state are already legally due on online purchases that would be taxable if the items were bought in a local store. If the retailer does not collect the taxes, the buyer is supposed to send them to the state voluntarily. As a practical matter,

however, if the taxes are not collected by retailers, they are virtually never paid.

The proposed law would close that loophole, not impose new taxes. It's a matter of efficiency and fairness, of necessity and competitiveness. If those really are bipartisan values, the Senate will act without further delay to pass the Marketplace Fairness Act, and the House will follow suit.

[From the Idaho State Journal, May 6, 2013]

THERE'S A REASON THIS IS CALLED THE MARKETPLACE FAIRNESS ACT

(Editorial Board)

The Marketplace Fairness Act making its way through Congress is well-named. It would allow state governments to force Internet retailers to collect sales taxes from their customers and remit the proceeds to state and local governments—like, you know—brick-and-mortar retailers are required to do.

The shoppers who buy merchandise off the Internet are supposed to calculate sales taxes on their income tax forms, but the fact is most people don't do that. So it might be said that Idahoans pay an extra 6 percent when they buy from stores at home. That's money that pays to operate schools and other public services, and it's estimated that Idaho would collect about \$35 million if Internet sales were taxed.

Because some states, like Idaho, have refused to authorize collection of sales taxes on online purchases, Congress is acting on behalf of hometown merchants with a federal law. The legislation cleared its first procedural hurdle Thursday on a bipartisan Senate vote, 63 to 30. Final Senate passage is scheduled for Monday and that tally is likely to be even more strongly in favor, according to The New York Times. Earlier test votes won as many as 75 yeses, and House action, once seemingly unthinkable, may be unstoppable.

Tax opponents like Grover Norquist and the Heritage Foundation have long opposed any legislation that would require collection of levies on Internet purchases, calling it a tax increase. But Congress is hearing from their hometown constituents, and the tide has turned. Even public officials who signed Norquist's antitax pledge now are changing their minds. Typical is Rep. Scott Rigell, Republican of Virginia, who calls the struggling retailers back home "the hardworking men and women who have mortgaged their homes to buy or rent a little brick-and-mortar shop." Six percent may actually amount to their profit margin.

"I have some concern about the legislation," concedes Rep. Bob Goodlatte of Virginia, chairman of the House Judiciary Committee, which has jurisdiction on the issue, "but we also recognize the fairness issue—certain items being taxed in certain circumstances, other items being not—is a problem, so we're going to try to solve that." It can be done.

Norquist should not complain, though he characterizes the bill as a "money grab by cash-poor state and local governments that would get the power to tax consumers who do not have the power to vote them out of office." After all, consumers are already supposed to pay sales taxes even if an Internet merchant does not collect them.

The new law would rectify that, and that's why it is called the Fairness Act.

[From the Green Bay Press Gazette, May 5, 2013]

CONGRESS MUST LEVEL PLAYING FIELD ON INTERNET SALES TAXES

(Editorial Board)

How many of you have entered a dollar amount on Line 36 of the Wisconsin income tax Form 1?

That's the line where you self-report "sales and use tax due on Internet, mail order, or other out-of-state purchases." In other words, if you've ever purchased something from Amazon, for example, you should have entered a dollar amount here when you filed your taxes.

But very few people do. About one of every 100 state taxpayers did when they filed their 2010 income taxes, according to a 2012 story by Steven Walters of WisconsinEye, a non-profit public affairs channel.

Currently, all retailers in Wisconsin collect sales tax on purchases and pay that money to the state. If you buy something, the state and county sales taxes are part of what you pay.

If you purchase something online from a business that has a physical presence in Wisconsin, you pay sales tax. But if that business doesn't have a store or warehouse in Wisconsin, it doesn't charge a sales tax.

For example, if you went online and purchased a shirt from Lands' End, based in Wisconsin, you'd pay sales tax. If you purchased a similar shirt from L.L. Bean, based in Maine, you would not.

The loophole is courtesy of a 1992 U.S. Supreme Court decision that exempts companies from collecting sales tax from purchasers who live in a state where the business has no physical presence.

A bill that the Senate is expected to vote on Monday would change that. The Marketplace Fairness Act give states the ability to require online and mail order retailers to collect state and local sales tax based on the address of the purchaser.

Wisconsin retailers say this would level the playing field. In a meeting with Press-Gazette Media, area retailers said they don't have a problem competing against other businesses, as long as all play by the same rules and all charge a state sales tax.

Without that level playing field, area businesses find themselves answering a consumer's questions and concerns only to have that consumer order the same item online and not have to pay a sales tax. It reduces local businesses to showrooms. They do all the work; the online retailer collects the money.

What's at stake is millions of dollars as well as the fiscal health of the local community.

The state Department of Revenue estimates that Wisconsin lost \$157 million in revenue because taxes were not collected on mail order and other remote sales in 2012—\$78 million of that from e-commerce sales.

Also, the health of area businesses is important. They pay taxes, provide jobs and donate to local charitable organizations yet lose sales and money when tax-free purchases are made. The out-of-state online-only retailers aren't invested in your community.

The bill before the Senate sets a threshold of \$1 million in online sales so small businesses will not be hurt and calls for the state to provide free software so businesses can comply.

One aspect of the bill calls for the state to "establish a uniform sales tax base for use throughout the state." That concerns us because many counties, like Brown, have a 0.5 percent county sales tax. We wouldn't want to lose out on that money because the state must charge a uniform sales tax. And it's hard to believe that the software will not be able to determine the correct state and local sales taxes. The technology that has given us the ease of online shopping should also be able to clear that hurdle.

So far, the bill has bipartisan support in the Senate, but faces a much more unclear fate in the House.

However, Congress needs to pass this bill. Local businesses are willing to compete as

long as it's a fair fight. Also, the bill is not asking for a new tax; it's asking that the existing tax is applied fairly and uniformly and doesn't put the burden on the consumer to reimburse the state. That's not too much to ask.

[From the Northwest Herald, May 2, 2013]
WHAT'S FAIR FOR BUSINESS
(Editorial Board)

The scenario described by Play It Again Sports' owner Bob Ruer happens all too often in local businesses.

A customer comes into his Crystal Lake store, looks around, maybe tries out the wares, and then heads home to buy the same product online. Why? Because Internet retailers aren't required to collect sales tax at the buyer's local rate.

U.S. Sen. Dick Durbin, D-Ill., is pushing to end that with the Marketplace Fairness Act. We support Durbin's effort and encourage lawmakers in Washington to pass the act.

The legislation would put the initial costs on the states to provide retailers with the appropriate software to collect taxes. Internet retailers with less than \$1 million in annual sales would be granted an exemption.

Opponents of the bill, including large online retailers such as eBay and Overstock.com, have taken issue with the \$1 million exemption and suggested it should be bumped higher.

The bill has the support of big-box stores such as Walmart, Best Buy and Target and online giant Amazon.

Beyond the unlevel playing field for businesses, the situation causes the state of Illinois to lose out on a great deal of revenue.

Now, Illinois taxpayers are on an honor system when it comes to paying state sales tax for online purchases. Residents are supposed to note the sales tax they owe from Internet purchases on their state income-tax return. Durbin estimates that only 5 percent of Illinois taxpayers do so. Gov. Pat Quinn said the state stands to collect an additional \$200 million annually in sales-tax revenue if the bill passed.

This is not a tax increase. It's not a new tax. These sales taxes and tax rates are already in place.

This is a needed law to level the playing field for local businesses who've been good corporate citizens, hired local employees and paid property taxes that support local schools and other taxing districts.

Mr. DURBIN. Mr. President, what is happening with Internet sales? They are growing dramatically. Listen to these numbers. In 2012 online sales accounted for \$225 billion in sales in America. In the next 5 years it will double to \$435 billion. It is an endeavor that has become part of our lives. What we are asking in this bill is that those selling on the Internet be treated the same as those selling on the corners of our streets, to make sure the brick-and-mortar businesses have a level playing field. That is all we are asking.

This bill contains no new Federal tax, no new State and local tax. What it does is collect taxes already owed. It simplifies the system by saying there will only be one taxing entity that identifies the taxes to be charged in every single State, one audit from each State. It tries to provide for the retailers the basic software they need to get the job done.

This is a fascinating bill. For those who follow the Senate, it is a rare op-

portunity for us to have Republicans and Democrats together on the floor supporting a bill that has the endorsement of business and labor and local officials all across the United States. It is clearly an idea whose time has come. I hope we can pass it with a good strong vote and encourage our friends in the House to take it up quickly.

I close by thanking my colleague from Wyoming. He has been a great partner in this effort. He came to it before I did. I replaced Senator Dorgan after Senator Dorgan's retirement and tried to keep this moving forward. Today is our day for a vote. I thank him for all of his hard work on his side of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank all of the people who have participated, particularly Senator DURBIN who has helped to coalesce things, Senator ALEXANDER who came up with the idea for having a shorter bill, only 11 pages—never see it in the Senate—written in plain English, and it is States rights.

This does not cause the Federal Government to do anything. What it allows is for the States to do what they have already passed laws on. I can see this from the standpoint of an individual. I know in Wyoming if you buy something on the Internet and you are not charged a tax, you are supposed to fill out a form and send it in. That is a difficult thing to do, hard to even keep track of. This will eliminate that problem of individuals wanting to pay the tax but not knowing exactly how to do it.

I know it from the standpoint of a small businessman, if they had the experience of somebody coming in, trying on the goods, finding out exactly what they want, the color, the style, the feel, everything, and then ordering it on the Internet. The even more ironic part of it is when they have a problem with it, they bring it back to the local retailer to fix it.

I have seen it from the standpoint of a mayor. I know in Wyoming at least 30 percent and up to 70 percent of the revenue of the municipalities comes from the sales tax. That is on a declining basis at the moment. That is not only what they run the city's streets and snow removal on; a lot of the police, the fire protection, even education is affected by the sales tax.

I have seen it from the standpoint of a legislator as well. I know when we passed those taxes, we did not say: Okay, we want to discriminate against the local business that pays the property tax, hires people locally, and participates in all the community stuff. If you are out of State, we are going to let you off the hook.

No legislator ever passed a bill like that. This is one that corrects all of those things and brings fairness to the marketplace. I think it will make a significant difference, particularly in

communities where they will still be able to help out some of the charitable organizations and activities that would have to go by the wayside if this bill were not to pass.

I look forward to working with people on the House side. I wish to thank Senator DURBIN, Senator ALEXANDER, and Senator HEITKAMP, particularly, for all of their efforts on this bill. I thank Senator HEITKAMP for her persistence over 22 years and knowing the intricacies of how it works on the Canadian border, as well as having been involved in the original case where the Supreme Court challenged us to fix this problem.

Today we have a chance to fix this problem. I ask my colleagues to vote for the bill.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

MARKETPLACE FAIRNESS ACT OF 2013

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 743, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 743) to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

Pending:

Reid (for Enzi) amendment No. 741, of a perfecting nature.

Durbin amendment No. 745 (to amendment No. 741), to change the enactment date.

The PRESIDING OFFICER. Under the previous order, all postcloture time is considered expired.

Under the previous order, amendment No. 745 is withdrawn.

The question is on agreeing to amendment No. 741, offered by the Senator from Nevada, Mr. REID.

Mr. ALEXANDER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Alaska (Mr. BEGICH) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Texas (Mr. CORNYN), the Senator from South Carolina (Mr. GRAHAM), and the Senator from Kansas (Mr. MORAN).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted "nay."

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?